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Via CM/ECF

Honorable Philip M. Halpern, U.S.D.J.
The Hon. Charles L. Brieant Jr.
Federal Building and United States Courthouse
300 Quarropas St.
White Plains, NY 10601-4150

Application granted. A Fifth Amended Civil Case Discovery Plan and Scheduling Order will be docketed separately. The case management conference currently scheduled for February 22, 2022 at 11:00 a.m. is adjourned to June 21, 2022 at 11:00 a.m.

The Clerk of the Court is respectfully directed to terminate the motion sequence pending at Doc. 99.

SO ORDERED.



Philip M. Halpern
United States District Judge

Dated: White Plains, New York
November 8, 2021

- Re: 1) Campbell v. Plant Health Intermediate, Inc.
Case No.: 19-cv-03017 (PMH) (“Action No. 1”)
- 2) Plant Health Intermediate, Inc. v. Campbell, et al.
Case No.: 20-cv-07249(PMH) (“Action No. 2”)
- 3) Campbell v. Douglas Products and Packaging Company LLC
Case No.: 21-cv-07920 (PMH) (“Action No. 3”)

Dear Judge Halpern:

We represent Plaintiff/Counter Defendant Nicole Campbell (“Nicole”) in Action No. 1 and Action No. 3 and defendants Rupert Campbell (“Rupert”) and Clare Reinbergen (“Clare” and together with Rupert, “Defendants”) in Action No. 2. We write jointly with counsel for Plant Health Intermediate, Inc. (“PHI”), pursuant to Rule 1(C) of Your Honor’s Individual Rules of Practice, to request an extension of approximately 120 days of all existing discovery deadlines.

As Your Honor is aware, on January 13, 2021, the Court issued an order consolidating Action No. 1 and Action No. 2 (hereinafter, the “Consolidated Action”), granting Defendants’ request for permission to move to dismiss PHI’s Amended Complaint in Action No. 2, and requiring the parties to submit a Second Amended Civil Case Discovery Plan and Scheduling Order to allow discovery to proceed on the same track in the Consolidated Action. (See ECF No. 76.) On January 19, 2021, the Court entered the Second Amended Civil Case Discovery Plan and Scheduling Order. The January 19 Order contemplated that the parties were to have additional time to file written discovery requests in Action No. 2. Thereafter, on March 24, 2021, the parties fully submitted the motion to dismiss PHI’s Amended Complaint in Action No. 2. That motion remains sub judice and, pending the determination of the motion, Defendants have not filed a responsive pleading in Action No. 2. Accordingly, in Action No. 2, the parties do not yet know the extent of facts that may be in dispute or what affirmative defenses or counterclaims Defendants might assert.

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Defendants in Action No. 2 have served written discovery demands to which PHI has responded in part. PHI will have additional discovery responses to provide based upon the outcome of the motion in Action No. 2. PHI has not yet served discovery demands in Action No. 2 because the facts in dispute and the potential affirmative defenses and counterclaims that might be asserted are not yet known.

Nevertheless, the parties have engaged in non-party discovery. More specifically, the parties have obtained documents via subpoena from non-party William Brenner and held his deposition virtually over the span of two days in October. Nicole subpoenaed documents from non-party CliftonLarsonAllen LLP (“CLA”), and the parties are discussing discovery issues concerning that production. Following that, a deposition will be held of a representative of CLA. In addition, PHI has subpoenaed documents from non-parties Harvey & Company LLC and PKF O’Connor Davies LLP. As such, the parties have made efforts to move this case forward.

Relatedly, on September 22, 2021, Nicole filed Action No. 3 against Douglas Products and Packaging Company LLC (“Douglas”), an entity affiliated with PHI. Nicole designated Action No. 3 as a case related to the Consolidated Action. On November 3, 2021, Your Honor granted Douglas’ request to answer or move against the complaint in Action No. 3 by November 18, 2021.

As required by Rule 1(C) of Your Honor’s Individual Rules of Practice, the parties state:

(1) Original Date(s): The current scheduling order requires that non-expert depositions be completed by November 9, 2021, and all fact discovery be completed by November 22, 2021. The remaining deadlines in the Consolidated Action are: i) all expert discovery by January 21, 2022; ii) expert disclosures by December 7, 2021;¹ iii) rebuttal expert disclosures by January 10, 2022; and iv) all discovery by January 21, 2022.

(2) Reason for Request: To allow sufficient time for the parties to complete paper discovery before depositions take place, including additional written discovery following Defendants filing of an Answer, if one is required in Action No. 2, before the end of fact discovery.

(3) Number of Prior Requests and Result: One prior request was made to extend the discovery deadlines in Action No. 1, which was granted by the Court. Two prior requests have been made to extend the discovery deadlines in Action No. 2.

(4) Consent: All parties to the Consolidated Actions consent to this request.

¹ The prior scheduling order inadvertently stated December 7, 2022 for this date.

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The parties propose the following new dates for the completion of discovery in the Consolidated Action:

- (1) Fact discovery, including written discovery, shall be completed by March 23, 2022;
- (2) Non-expert depositions shall be completed by March 9, 2022;
- (3) All expert discovery shall be completed by May 20, 2022;
- (4) Plaintiff's expert disclosures shall be made by April 6, 2022;
- (5) Defendant's expert disclosures shall be made by April 6, 2022;
- (6) Rebuttal expert reports shall be exchanged by April 22, 2022; and
- (7) All discovery shall be completed by May 22, 2022.

A proposed Fifth Amended Civil Case Discovery Plan and Scheduling Order with these dates is attached.

We thank Your Honor for your time and consideration.

Respectfully,
Fred D. Weinstein
Fred D. Weinstein

cc: John Power, Esq. (via CM/ECF)
Joseph P. Wodarski, Esq. (via CM/ECF)